

In the United States District Court
For The Southern District of Texas
Galveston Division

Malin International	§	
Ship Repair & Drydock, Inc.	§	
Plaintiff	§	
v.	§	Civil Action No. _____
	§	
Oceanografia, S.A. de C.V., and	§	Admiralty 9(h)
Defendant	§	

Verified Complaint and Request for Order to Seize Vessel

Pursuant to Federal Rule of Civil Procedure 3 and Supplemental Admiralty Rules B and E, plaintiff Malin International Ship Repair & Drydock, Inc. (“Malin Ship Repair”) files this Verified Complaint seeking damages against Oceanografia, *in personam*.

Parties

1. Plaintiff is Malin International Ship Repair & Drydock, Inc. (“Malin Ship Repair”). Malin Ship Repair is a corporation with its principal office in Galveston, Texas.

2. Defendant is Oceanografia S.A. de C.V (“Oceanografia”). Oceanografia is a corporation organized and existing under the law of Mexico, with its principal offices located in Ciudad del Carmen, Campeche, Mexico. Oceanografia does not maintain a regular presence in the Southern District of Texas, nor does it have a registered agent for service in the State of Texas. Service of process on Defendant may be made according to the laws of the State of Texas by serving the Secretary

of State. Fed. R. Civ. P. 4(h)(1)(A). Defendant Oceanografia cannot be found within this district as stated in the attached affidavit.

3. Oceanografia is owned and managed by Amado Yanez Osuna, who also owned and managed Con-Dive L.L.C. (“Con-Dive”), a Texas limited liability company that ceased doing business and forfeited its registration with the Texas Secretary of State on August 7, 2009.

Jurisdiction and Venue

4. This Complaint presents maritime claims within the meaning of Federal Rule of Civil Procedure 9(h), and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1333.

5. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. §1391(b)(2) & (b)(3) and Supplemental Admiralty Rule E.

Facts

6. The M/V KESTREL (IMO# 7628758) is an offshore support vessel, valued at \$20 million which currently has no cargo. The M/V KESTREL is under charter and/or a lease/purchase arrangement with Oceanografia, pursuant to which Oceanografia has control and all relevant incidents of ownership of that vessel.

7. On information and belief, the vessel M/V KESTREL is now, or during the pendency of this action will be, within this District, and is located at the Port of Galveston, specifically, at Pier 41 in Galveston County, Texas.

8. During 2008 Malin Ship Repair did certain work in the nature of loading, fabricating and storing certain materials and supplies on and for vessels chartered by and/or for the account of Oceanografia acting through its employees and representatives or those of its agent, Con-Dive, with whom Oceanografia shared a common ownership and management. Those supplies and services, included the deck load, on a 250' x 80' oceangoing barge of Oceanografia's 100 ton crane, and components and associated equipment, under the direction and instruction of Oceanografia, for ocean transit to Mexico, as well as associated services, all of which were necessary to maintain, operate and deliver Oceanografia's charters, vessels, and equipment in proper condition for navigation, operation and ocean transit.

9. Oceanografia and/or Con-Dive, as its agent, and their employees and representatives specifically contracted for and accepted the work provided for Oceanografia's account and wholly failed or refused to pay for that work.

10. In 2008 and 2009, Malin Ship Repair delivered to Con-Dive and subsequently Oceanografia bills totaling \$229,257.61 for the work done and materials and supplies furnished in 2008. True and accurate copies of Malin Ship Repair's 2009 invoices for the work are attached hereto as Exhibit A.

11. The invoices in Exhibit A represent charges which were specifically requested, agreed to and are fair and reasonable for the work performed and materials and supplies furnished to Oceanografia on its account, at its request

and/or the request of its sister company Con-Dive. Those invoices continue to incur interest per plaintiff's invoicing terms.

12. Neither Oceanografia, Con-Dive nor anyone acting on their behalf, including their common owner and manager Amado Yanez Osuna, have paid for the goods and services provided or contested any of the invoices.

Causes of Action

13. **Breach of Contract.** Plaintiff and Oceanografia entered into an arrangement for provision of goods and services on an open account. Plaintiff performed its obligations under the contract. Oceanografia, however, has not performed its contractual obligations by failing to pay for the goods and services. Defendant's nonperformance is a breach of the parties' agreement. As a result of this breach, Oceanografia owes the invoice totals plus penalties and interest. As of February 2009, Oceanografia owed \$229,257.61. Since that time, those amounts have continued to accrue interest per plaintiff's invoicing terms.

14. **Quantum Meruit.** Alternatively, Plaintiff seeks damages from Oceanografia in quantum meruit. Services and goods were provided to Oceanografia. Those services and goods were provided at the request of Oceanografia or its authorized agent Con-Dive. As a direct result of Oceanografia's rendition of services and goods, a benefit was conferred. Defendants will be unjustly enriched in the base amount of \$209,001.00 if they are allowed to retain the benefit conferred on them without payment for the

reasonable value of the services and goods provided. As a result, Plaintiff has been damaged and is entitled to recover the reasonable value of the services and goods provided to Oceanografia, which, excluding interest at the invoiced amounts, total \$209,001.00. Plaintiff reasonably expected payment for the services and good provided because it has provided similar services and goods to Oceanografia and others in the industry and has been paid for such. Such services and goods were not provided gratuitously. *See* Exhibit A.

15. **Attorney's Fees.** As a result of Oceanografia's breach, Plaintiff was forced to retain legal counsel and seeks reimbursement for its reasonable attorney fees.

Request for Relief

16. For these reasons, Plaintiff requests the following:

- a. That process in due form of law issue against Defendant, citing it to appear and answer under oath, all and singular, the matters alleged in the Verified Complaint;
- b. That, since Defendant cannot be found within this district as stated in the attached affidavit of Robert E. Booth, and pursuant to Fed. R. Civ. P. Supplemental Admiralty Rule B, this court issue an order directing the clerk of the court to issue Process of Maritime Attachment and Garnishment pursuant to Fed. R. Civ. P. Supplemental Admiralty Rule B attaching the M/V KESTREL (IMO# 7628758), including its engines, tackle, apparel, etc. which are sent by

or due and owing by Defendant in the amount of at least \$209,001.00 plus attorney's fees, interest and costs to secure Plaintiff's claims, and that all persons claiming any interest in same be cited to appear and, pursuant to Fed. R. Civ. P. B and E, answer the matters alleged in the Verified Complaint;

- c. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof; and
- d. That the M/V KESTREL (IMO# 7628758), including its engines, tackle apparel, etc., be condemned and sold to satisfy judgment herein.
- e. That Plaintiff have such other, further and different relief as the Court may deem just and proper.

Respectfully submitted,

Mills Shirley L.L.P.

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By: /s/ Robert E. Booth

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